

## A BURNED SCRAP OF PAPER

### CARL MANKE'S FIGHT FOR HIS LIFE.

A NOVEL LEGAL POINT MADE IN AN ERIE COUNTY MURDER TRIAL—HOW A SECOND TRIAL WAS SECURED FOR A MAN SENTENCED TO DEATH.

BUFFALO, Feb. 4.—About four years ago two farmers, named Carl Manke and John Altoff, living in the Town of Elma, Erie County, quarreled about the location of a line fence dividing their farms. The result was a vexatious lawsuit, and the engendering of a deadly hatred between the two. On the 2d day of April, 1878, Altoff left his farm to drive to this city after a load of feed. About the time he was expected to reach home, Conrad Benzel, a boy in the employ of Altoff, was in a lot on the farm, and saw a man leading a horse attached to a wagon, which he thought was his employer's horse and wagon, toward a piece of woods a quarter of a mile from Altoff's house. The boy ran into the house and called Mrs. Altoff out to look at the horse and wagon. She recognized them as her husband's. She told Benzel to run and see what the man was doing with the property. The boy ran toward the woods. As he reached the brow of a hill near the woods, he saw the man coming back, and when he was in a certain place in the road he stooped down and picked up a stone and began pounding the head of another man, who Benzel then discovered was lying in the road. The boy ran toward the spot, crying "murder." He recognized the first-mentioned person as Carl Manke. The latter, when he saw that he was discovered, ran toward the woods, whence there is a "cross-lots" way to his house. Benzel did not go up to the person lying in the road, but hurried back and told Mrs. Altoff what he had seen. The two then went to the place where the affair occurred. They found John Altoff lying in the road dead. He had been shot in the head and face with a shot-gun, and was evidently dead when Manke was discovered pounding him with the stone. A warrant was at once issued by Justice Hurd, of Elma, and Manke was arrested at his farm. Coroner Almendinger made an investigation, and committed Manke to the Erie County Jail.

On the 2d of May, 1878, Manke's trial was begun. When Altoff was found in the road, a piece of paper was found near him, having the appearance of having been used as a gun-wad. This piece of paper had been torn from a copy of the *Buffalo Demokrat and Weltburger*, a German paper, of the date of March 21, 1878. The day after the murder a part of the paper of that date was found in Manke's house, and it was found that he was a regular subscriber to the journal. The fragment of paper alleged to have been used as gun-wadding was admitted as evidence against the prisoner, and the testimony of a witness that it had, when found, every appearance of such use, and of having been fired from a gun, was received. A pair of boots belonging to Manke, which were sworn to fit tracks leading from the scene of the murder toward Manke's house were also used by the prosecution. To the testimony of the witness who swore that the piece of paper had undoubtedly been used as a gun-wad, and fired from a gun, the counsel for the prisoner objected, and that objection saved Manke from hanging on the 21st of June following the murder. Manke presented evidence to show that he was elsewhere on the day of the murder; that he did not wear the boots on that day, and that the newspaper from which the fragment had been torn was a whole newspaper on the day of the murder, and was not torn until the evening of the day after. Manke was convicted, however, and sentenced to be hanged on the day mentioned above.

The Hon. A. G. Rice and the Hon. L. L. Lewis, the prisoner's counsel, at once filed a bill of exceptions, obtained a stay of proceedings, and took a writ of error to the General Term. The writ was dismissed. The case was then taken to the Court of Appeals, where the action of the General Term was reversed, and the case sent back to be argued on its merits. The main reliance of the prisoner's counsel for a new trial was on the point they made on the incompatibility of the evidence in relation to the gun-wad. The objection to the testimony was that the subject was not one of science or skill, and hence the opinion of the witness in the matter was improper, and that the paper and its appearance should simply have been described, and the jury left to draw their inference therefrom. The opinion on this point was delivered by the Hon. J. L. Talcott, Chief-Justice of the General Term, who sustained the objection made by the prisoner's counsel, and ordered a new trial of the case. The decision was rendered in April, 1879. The prosecution then carried the case to the Court of Appeals, where the judgment of the General Term was affirmed last September.

On the 2d of December last, on application of Manke's counsel, Judge Baker appointed Prof. Gray, of Utica; Prof. James P. White, and Thomas F. Rochester, of Buffalo, and Prof. E. M. Moore, of Rochester, a commission to inquire into the sanity of the prisoner. They examined him, and reported that he was of sound mind. Manke's second trial is set down for the present term of Erie County Court. The case has attracted wide attention in legal circles, owing to the novel point on which the new trial was granted.